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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,671	01/29/2004	Stephen Gerard Nikodem	21666-1	5421
7590 01/05/2007				
John S. Beulick Armstrong Teasdale LLP Suite 2600 One Metropolitan Square St. Louis, MO 63102		EXAMINER BUMGARNER, MELBA N		
		ART UNIT 3732		PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/05/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/767,671	Applicant(s) NIKODEM, STEPHEN GERARD	
	Examiner Melba Bumgarner	Art Unit 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,5 and 8-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4,5,8-11 and 13-18 is/are rejected.
- 7) ☐ Claim(s) 2 and 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10/24/06</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 4, 5, 8-11, and 13-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Sachdeva et al. (5,312,247). Sachdeva et al. disclose an apparatus comprising a wire 14 fabricated from superelastic material or shaped memory alloy (column 5 line 16) comprising a first end, a second end 16 and a substantially planar body extending therebetween, the body having a substantially uniform thickness and movable between a static position and an activated position, wherein the body is stretched between the first and second end, the first end configured to couple to a tooth and capable of coupling to a tooth that is partially impacted, the second end configured to secure the apparatus relative to the tooth, such that the wire applies substantially continuous force to the tooth. The body is sinusoidal shaped (figure 9). The “first end” is configured to couple to the tooth without circumscribing the tooth. The apparatus has a substantially uniform thickness between the ends. The body comprises a spring extending between the first and second ends (column 5 line 67). The apparatus further comprises an orthodontic fixture 20. Sachdeva et al. show a method for treating a tooth comprising the steps of using the wire as claimed and capable of use on a tooth that is partially impacted. The body is unbraided between the first and second ends.

Allowable Subject Matter

3. Claims 2 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

4. Applicant's arguments filed October 10, 2006 and December 12, 2006 have been fully considered but they are not persuasive. The amended claims have overcome the primary prior art references, Wallshein and Schachter; however, the claimed language of said apparatus comprising a "wire" has not overcome a rejection over Sachdeva et al. The wire of Sachdeva et al. comprises the claimed elements of the rejected claims. It is noted that the apparatus is for facilitating treatment or treating a tooth that is at least partially impacted and the erupted tooth of the prior art may be "partially" impacted as it is being repositioned.

Information Disclosure Statement

5. The information disclosure statement (IDS) submitted on October 24, 2006 is in compliance with the provisions of 37 CFR 1.97; however, the U.S. patents listed have been considered by the examiner in PTO-892 of June 8, 2006 and January 25, 2005.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melba Bumgarner whose telephone number is 571-272-4709. The examiner can normally be reached on Mon-Fri.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriquez can be reached at 571-272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in cursive script, reading "Melba Bumgarner".

Melba Bumgarner
Primary Examiner